UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KEVIN ALMY,

Plaintiff,

ORDER

vs.

D. DAVIS, et al.,

)

2:12-cv-00129-HDM-VCF

ORDER

)

ORDER

)
)

Defendant.

Plaintiff has filed an "amended objection" to the court's order denying him leave to file a motion for reconsideration of the dismissal of Count XV of his complaint for failure to exhaust (#375). Defendants have opposed (#380). Plaintiff has not filed any reply, and the time for doing so has expired.

In his request for leave, plaintiff argued that he did not receive notice under Klingele v. Eikenberry, Rand v. Rowland, and Woods v. Carey before responding to the defendants' partial motion to dismiss. The court rejected plaintiff's assertion on the grounds that the docket clearly shows the court sent plaintiff a Klingele notice the same day defendants filed their motion to dismiss, and such notice was never returned undelivered to the court. Plaintiff's "amended objection" attaches a kite that he says shows he never received the Klingele notice. (Doc. #375 Ex. 1). The kite offers insufficient proof that plaintiff did not

receive the Klingele notice. The dismissal of Count XV was

## Case 2:12-cv-00129-HDM-VCF Document 394 Filed 11/12/14 Page 2 of 2

definitively decided by Judge Mahan on September 27, 2013. A substantial period of time has passed since the entry of Judge Mahan's order, and several objections and motions to reconsider the dismissal have been considered and rejected. Plaintiff has had the document he now relies on in his possession since December 2012, and he did not include it in his original motion. Accordingly, the court finds that plaintiff's amended objection is untimely and that the granting of the motion four weeks prior to the commencement of the trial is prejudicial to the defendants. This holding is without prejudice to the plaintiff seeking such relief on his retaliation claims as may be legally permitted in a separate action.

Howard DMEKiller

UNITED STATES DISTRICT JUDGE

IT IS SO ORDERED.

DATED: This 12th day of November, 2014.